IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 210 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NITESHKUMAR KALUSINGH CHAUHAN

Versus

SHEKHAWAT TRANSPORT CO.

Appearance:

1. First Appeal No. 210 of 2004

MS NISHA M THAKORE for appellant

NOTICE SERVED for Respondent No. 1

MR MEHUL SHARAD SHAH for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.H.KADRI

Date of decision: 16/04/2004

ORAL JUDGEMENT

1. The appellant (original claimant), by filing this appeal under Section 173 of the Motor Vehicles Act, 1988 ('Act' for short), has challenged the judgment and order dated September 2, 2003, passed by the Motor Accident Claims Tribunal (Auxi.) Court No.10, Ahmedabad, rejecting application Exh.3 filed by the claimant under Section 140 of the Act in MACP No.80 of 2002.

2. The claimant had sustained injuries in the vehicular accident which took place on August 6, 2001 at 11.30 a.m. on Dehgam-Ahmedabd road due to rash and negligent driving of Tanker bearing RTO Registration No. GJ-1-T-5165. The accidental injuries sustained by the claimant had resulted into fracture on right thigh and knee joint. The claimant, at the time of filing application Exh.3 under Section 140 of the Act, had produced disability certificate dated March 24, 2003 issued by Dr. Manish R. Shah, Orthopaedic Surgeon. The Tribunal has held that the fracture was not privation of any member or joint and there was no permanent disablement as defined under Section 142 of the Act and has rejected the application Exh.3, which has given rise to filing of this appeal by the original claimant.

3. At the time of deciding the application filed by the claimant under Section 140 of the Act, the Tribunal is only required to see whether the claimant had sustained injuries in a vehicular accident which had resulted into permanent disability. Prima facie, the disability certificate issued by Dr. Manish R. Shah had proved that the fracture sustained by the claimant had resulted into a permanent disability. In my view, the ingredients of Section 140 of the Act are satisfied having regard to the evidence produced by the claimant and, therefore, the application Exh.3 filed by the claimant in MACP No. 80 of 2002 deserves to be allowed. The respondent No.2-National Insurance Company is directed to deposit with the Tribunal the amount of Rs.25,000/- under 'no fault liability' along with interest at the rate of 9% from the date of application till the date of deposit and costs of the application, within eight weeks from today. However, in view of the contention raised by the learned advocate, Mr. Mehul Sharad Shah, appearing for the respondent No.2-Insurance Company, that, as fracture was not privation of any member or joint, it cannot be said to be permanent disablement, and to protect the interest of the Insurance Company, the following directions are given.

4. The original claimant shall file an undertaking before the Tribunal within four weeks of the service of this order on the claimant to the effect that the main claim petition shall not be abandoned, shall not be withdrawn, and shall not be permitted to be dismissed for default or for any other cause, and that the claimant shall obtain a decision on merits in the said claim petition. The amount awarded under the impugned order shall be adjusted against the final award in the main claim petition.

5. On the said undertaking being filed, 40% of the amount awarded shall be permitted to be withdrawn by the claimant without security. The remaining 60% of the amount shall be invested in a Cumulative Fixed Deposit in any nationalized Bank in the name of the Registrar of the Tribunal for a period of five years. The deposit shall be renewed from time to time till the main petition is disposed of.

6. Subject to the directions hereinabove, the appeal is allowed, and the application Exh.3 filed by the claimant in MACP No. 80 of 2002 is also allowed. There shall be no order as to costs. Looking to the peculiar facts of the case, the Tribunal is directed to expedite the hearing of the main claim petition.

(M.H. Kadri, J.)

(swamy)